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FEB 18 1957
JOHN T. FEY, Clerk

THE SUPREME COURT OF THE UNITED STATES

PHILLIP W. AUSTIN

Appellant

v.

THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA and the JUDGES THEREOF

Appellees

MOTION REQUESTING PERMISSION TO DISPENSE WITH PRINTING OF PETITION

Now comes the petitioner in the above entitled matter and respectfully moves the Court to dispense with the rule requiring printed petitions and for reason therefor says:

That it would work a great hardship upon the petitioner, who, although acting in this cause, for the benefit of all the members of the District of Columbia Bar, has had the burden of bearing the costs from the inception of the cause.

Respectfully submitted,

Phillip W. Austin

Phillip W. Austin, Pro Se.

27/34

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1956

No. 783

PHILLIP W. AUSTIN, Petitioner,

v.

THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA, AND THE JUDGES THEREOF, Respondents

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Phillip W. Austin, Pro Se
Room 503 Columbian Building
Washington 1, D. C.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1956

No._____

PHILLIP W. AUSTIN, Petitioner

v.

MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA,

AND THE JUDGES THEREOF

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Phillip W. Austin, a member of the bar of the District of Columbia, on behalf of himself and all members of the bar of the District of Columbia, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, sustaining the judgment of the United States District Court for the District of Columbia, dismissing the Complaint for a Declaratory Judgment to Enjoin the Judges of the Municipal Court for the District of Columbia from Debarring the Appellant from Practicing before the said Municipal Court.

OPINION BELOW

The opinion of the Court of Appeals is reported in 98 U.S. App. D.C. 339 and 235 F 2d 836.

JURISDICTION

The jurisdiction of this Court is invoked under Article I, Sec. 9, of the Constitution of the United States, under the 5th Amendment to the Constitution, and under 28 U.S.C. Rule 19, of the Rules of this Court and under Article III, Sec. I, Clause I, of the Constitution.

Judgment affirming District Court's Order, June 21, 1956.

Order Denying Appellant's Motion for Rehearing in banc, August 7, 1956.

Motion permitting filing of brief by Amicus Curiae.

Judgment of Court of Appeals entered September 21, 1956.

Judgment docketed in U.S. District Court, D.C., September 27, 1956.

Time in which to file petition for certiorari extended to January [illegible], by order of Mr. Justice Reed.

Further extended to January 31, 1957, by order of Mr. Justice Reed.

Finally extended to February 18, 1957, by order of Mr. Justice Reed.

QUESTION PRESENTED

Whether under 41 Stat. L. Index, p. 68, District of Columbia - Sec. 218 - Admission of Attorneys, p. 561, on p. 561, ch. 153, Sec. 218, and as construed by the U. S. Court of Appeals for the District of Columbia Circuit in Mullen v. Canfield, 70 App. D.C. 168, 105 F2d 47, and under the Constitution of the United States as construed by this Supreme Court respecting Article I, Sec. 9, Clause 3, in Ex Parte Garland, 4 Wall. 347, 18 L. ed 366, Cummings v. State of Mo., 4 Wall. 277, and the 5th Amendment, due process provision, as construed by this Supreme Court in Ex Parte Garland, 4 Wall. 347, 366, 367, 379, 18 L. ed 366, Bradley v. Fisher, 13 Wall. 335, 354, 355, the Municipal Court for the District of Columbia can by Rule (75) abolish the membership of the entire bar of the District of Columbia at its bar and require that, under pains and penalties of debarment at its Court, attorneys take an oath, not prescribed and authorized by Congress, as is the case of every Federally constituted Court possessed of the power to admit attorneys to practice, but an oath solely of the Municipal Court's own creation, and requiring them, further, to subscribe to a roll of the Municipal Court, to pay fees and carry cards of identification, as a prerequisite to regaining their right to practice in the Municipal Court.

OUTLINE OF THE CASE

The law enacted by Congress reposes in the United States District Court only the exclusive duty and power to admit applicants for admission to the bar of the District of Columbia.

No other Court of the judicial structure of the District is accorded this power.

In 1939, the U.S. District Court of Appeals for the District of Columbia Circuit decided in the case of Mullen v. Canfield, 70 App. D.C. 168, 105 F 2d 47, that the Police Court of the District of Columbia had been empowered to administer a fine of $20.00, or 48 hours in jail, or ther or both, for contempt of Court and no more.

The Police Court had promulgated a rule whereby it was declared that solicitation of clients by attorneys was prohibited and provided that an attorney found guilty could be punished by suspension or other means.

The Court established a grevance committee and subsequently Mullen was charged of the above offense, tried and suspended for a stated period. As above stated, it went to the Court of Appeals.

In addition to denying the power of the Police Court to extend its jurisdiction beyond contempt, the Court engaged on a through analysis respecting the relationship of the Courts of the jurisdiction to each other and the relationship of the attorney to the Courts.

It held:

(1) That only the District Court possessed the power to examine, qualify and admit attorneys to practice.

(2) That when an applicant was admitted by the District Court, he became entitled to practice in the Police Court and all other inferior Courts of the

what was contained in 62 there was added; "...provided such person shall: Take and subscribe to the following oath or affirmation, viz:

"I, _____, do solemnly swear (or affirm) that I am a member in good standing of the United States District Court for the District of Columbia, having been duly admitted on the ___ day of ___,

In 1942, Congress created a Municipal Court of Appeals and consolidated Police and Municipal Courts into one Court as the Municipal Court for the District of Columbia composed of two branches, the criminal and civil.

Because of the outcome of the Mallen case, supra, Congress was importuned to grant unto the Municipal Court and the Municipal Court of Appeals the power to censure, suspend or expel for certain offenses and Congress granted the aforesaid powers, setting the specific offenses and requiring the issuance of charges under oath, presentation to the Court, upon which the Court could order the charges filed with the clerk, to fix a time for hearing. A certified copy of the charges were to be formally served upon the respondent attorney.

A comparison with Sec. 11-1301, of the 1951 D.C. Code will disclose that whereas 11-1301 gives to the District Court the power of admission, etc. as above stated, there is also included in the same paragraph the power to censure, suspend, or expel, and that the language of 11-775 was compounded from 11-1301, and in the omission in 11-775 of the power to admit, it is inescapable that Congress deliberately and intentionally intended to and did deny to the Municipal Court and the Municipal Court of Appeals any power whatever respecting admissions to practice.

The rules respecting attorneys in the Municipal Court and the Municipal Court of Appeals were substantially identical. That of the Municipal Court under Rule 62, stated:

> The Bar of this Court shall consist of any person who is a member of the Bar of the United States Court for the District of Columbia in good standing unless disbarred or suspended by action of this Court.

On January 2, 1952, the rule was changed to Number 75, and in addition to what was contained in 62 there was added; "...provided such person shall: Take and subscribe to the following oath or affirmation, vis:

> "I, _____, do solemnly swear (or affirm) that I am a member in good standing of the United States District Court for the District of Columbia, having been duly admitted on the ___ day of ___,

19___; that I have not been suspended or disbarred by any Court; that I will demean myself as an attorney and counsellor of the Court uprightly and according to law; and that I will support the Rules of this Court, the laws of the District of Columbia, and the Constitution of the United States.

(2) Upon subscribing thereto on a card to be furnished by the Clerk of this Court, sign the Roll of Attorneys of this Court and pay the sum of Fifty Cents ($.50) to the Clerk of this Court.

This provision shall become effective on the 2nd day of January, 1952, and shall be complied with by all persons whether or not a member of the Bar of this Court at any time prior to this date.

There followed (b), (c), (d), (e) and (f) which are not here involved and were substantially in effect prior thereto.

In Appellant's Reply Brief, it was stated that upon application to the District Court, the Municipal Court could obtain the identical roll possessed by the District Court and that all changes would be supplied as and when they occurred.

Rule 75 as appended hereto is not merely a copy of the rule, it is the rule itself as furnished by the Municipal Court as and when they appear in that Court.

It will be noted that it contains no preamble or other prefatory explanation of the causes or purposes for the rule nor the authority for its promulgation.

STATUTES AND RULES INVOLVED

31 Stat. L. the index on page 2019 which says: Attorneys admission to bar, District of Columbia, p 1224, Sec. 218.

41 Stat. L. the index p 68 (LXVIII) amending Stat 31, Sec. 218, shows District — Sec. 218, Admission of Attorneys" referring to p 561.

Sec. 218, on p 561 in the 1951 D.C. Code as 11-1301, "The Supreme Court of theDistrict of Columbia in general term shall have the full power and authority from time to time to make such rules as it may deem proper respecting the examination, qualification and admission of persons to membership in its bar, and their censure, suspension, and expulsion, and every person so admitted before he shall be at liberty to practice therein, shall take and subscribe the following oath: 'I, ____, do solemnly swear (or affirm) that I will demean myself as a member of the bar of this Court uprightly and according to law; and that I will support the Constitution of the United States.' approved 4-19-20.

56 Stat. L. p 196, ch 207, Sec. 10, in 1951 Code as 11-775 (Apr. 1, 1942) "The Municipal Court for the District of Columbia, and the Municipal Court of Appeals for the District of Columbia as established by this subchapter, shall have full power and authority to censure, suspend, or expel from practice, at their respective bars, any attorney for any crime involving moral turpitude, or professional misconduct, or any conduct prejudicial to the administration of justice. Before any such attorney is censured, suspended, or expelled, written charges under oath against him must be presented to the Court, stating distinctly the grounds of complaint. The Court may order the charges to be filed in the office of the clerk of the Court and shall fix a time for hearing thereon. Thereupon a certified copy of the charges and order shall be served upon the attorney personally by the marshal or such other person as the Court may designate, or in case it is established to the satisfaction of the Court that personal service cannot be had, a certified copy of such charges and order shall be served upon him by mail, publication, or otherwise, as the Court may direct. At any time after the filing of said

written charges, the Court shall have the power, pending the trial thereof, to suspend from practice at its bar the person charged.

MUNICIPAL COURT RULES OF PRACTICE AND PROCEDURE

Sec 32 31 Stat.L. Mar. 3, 1901, p 1194. Practice - "The practice and forms of proceeding in trials before Justices and in trials of appeals from Justices, so far as not herein directed, shall be governed by the rules of the Supreme Court."

Under 41 Stat. L. p 1312, ch 125, Sec. 11, Mar. 13, 1921, the rule was amended as follows: Sec. 11: "The Municipal Court, sitting in banc, shall have the power to prescribe fees and costs, including the fee to be paid for a jury trial, to make rules of practice, pleading, and procedure, not inconsistant with law, and to modify and change the same from time to time, to insure the proper administration of justice. Section 1109 D.C. Code relating to fees shall not apply to said Municipal Court." Under 56 Stat. L., ch 207, Sec 5(b) April 1, 1942

"The Municipal Court for the District of Columbia shall have the power and is hereby directed to prescribe, by rules, the forms of process, writs, pleadings and notices and practice and procedure in such Court, to provide for the efficient administration of justice, and the same shall conform as nearly as may be practicable to the forms, practice, and procedure now obtaining under the Federal Rules of Civil Procedure. Said rules shall not abridge, enlarge, or modify the substantive rights of any litigant. After their effective date all laws in conflict therewith shall be of no further force or effect: Provided, however, That nothing in this section shall be construed to require any change inthe existing rules, procedure, or practice now in effect in the small claims and conciliation branch of the presently constituted Municipal Court of the District of Columbia; nor shall this Act or any section thereof in any way repeal or modify the provisions of the Act of March 5, 1938 (52 Stat. 103, ch 49), establishing said small claims and conciliation branch. (Emphasis applied).

STATEMENT

Plaintiff, a member of the bar of the District of Columbia, and Paul B. Klean, a member of the bar of the District of Columbia who complied with Rule 75 of the Municipal Court, were counsel of record in the case of Hillcrest Heights Apartments v. Wilbur de Parini, C.A. No. H-3493-55. The matter was on trial before Judge Board and a jury. The voir dire had been completed, the jury selected, arguments on the law had been passed upon, when the Court announced a recess. Plaintiff went into the Chief Judge's anteroom and Judge Board was seated there. Plaintiff started to leave, when Judge Board said, "Phil, I understand you're not a member of the bar of this Court". Plaintiff replied, "To the contrary, I've been a member and in active practice in this Court for 31 years, before any Judge of this Court, with the exception of Judge Scott, was admitted to practice". Judge Board then said, "I understand you haven't complied with Rule 75", and plaintiff answered, "That's correct. I don't consider it valid". Judge Board said, "I may agree with you, but it was adopted before I came on the bench and I'm bound by it." Plaintiff replied, "You're bound by the law". The Judge and plaintiff then went into the Court room while the bailiff assembled the jurors. The Judge made a courteous explanation to the jury of the situation, paid tribute to the character of the plaintiff, offered to pay the fee necessary to meet the rule and to allow one half hour for the compliance with Rule 75. Plaintiff expressed his gratitude for the Court's consideration and respectfully declined, but urged that the case not be halted as unfair to his clients. The Court then announced that plaintiff was debarred from practicing in the Municipal Court until he complied with Rule 75, and declared a mistrial. The following day he was served with a written copy of the Amended Order made a part of his complaint below.

Thereafter plaintiff filed his complaint for a declaratory judgment to enjoin the Municipal Court and the Judges thereof from debarring him from practicing before that Court and upon a motion to dismiss by defendants the order of dismissal was entered by the District Court, holding that the Municipal Court is not an entity that can be sued and that the complaint fails to state a claim against the Judges of the Municipal Court upon which relief can be granted.

It should also be stated that a request was made of the Judge of the Municipal Court who issued the order of debarment against appellant for a transcript of the oral and original order of debarment, which contained no provision for a stay of its effect, the same being reported, and that the request was denied. Yet in the oral order the term employed by the Court was "debarred" and not "prohibited" and "enjoined". In any case these terms are synonymous.

REASONS FOR GRANTING THE WRIT

The present decision, without saying so, in effect reverses that of the Mullen v. Canfield case, supra, indeed, it completely emasculates that decision and by so doing, not only goes contrary to the plain will of Congress, but sets up precedents which will plague the Courts because of the injury done to well established principles enunciated by this Supreme Court, in that/law-yer's profession, and all others, which this Court in Bradley v. Fisher[1], held to be property and entitled to the protection of due process, and which was declared in Ex Parte Garland[2], to be entitled to the protection against bills of attainer and Ex Post Facto laws.

It set up a precedent in that, to arrive at its decision, it was obliged to ignore the invariable rule of all courts, including its own[3], that on a motion to dismiss only the sufficiency of the complaint may be brought into consideration. It sets up another precedent, in that it regarded the present matter one of "de minimis" whereas the universal rule is that the maxim "de minimis non curat lex" can have no application under a challenge to the law[4].

Again, it validates a procedure, whereby the Municipal Court by-passes the Municipal Court of Appeals which was created for express purpose of reviewing all actions of the Municipal Court for there existing no pleading, no file,

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Footnote: 1. Bradley v. Fisher, 13 Wall, 335, 354, 355, 20 L ed 646.
2. Ex Parte Garland, 4 Wall, 333, 367, 368, 377, 379, 18 L ed 366.
3. Filger v. Sutherland, 61 App. D.C., 84, 85, 57 F2d 604, 605.
4. Scranton Steel Co. v. Delaware & H.R.R. Co. 5 Hill, N.Y. 70, Feeney v. Eastern Rowing Assn. Inc. 22 N.E. 2d 899, Ballin v. Los Angeles County Pole, et al 111 P2d 993 43 Cal. App. 2d 884. Hifer v. Hibernia Nat'l. Bank in New Orleans, et al. 174, So 287, 289. Smith et al v. Bradley, et al, 37 N.Y. Supp. 2d 512.

1. Strauder v Straub 91 U.S. App. DC. 164, 201 F2d 365

nor anything relating to appellant, saving only a self serving order of the Court, it was contended that appellant, in contest that he perceived as an illegal invasion of his rights, to file an original action, setting forth the facts upon which he relied and which he would have to support by evidence, on trial[5]. This due process was denied.

Further, the decision, if permitted to stand, reverses a principle enunciated by this Court[6], and never departed from, even under England, that although contempt committed in the presence of the Court, an attorney can be debarred or in any manner restricted, by a sua sponte order of the Court, without an opportunity to show cause and be heard, in violation of due process[7].

In, apparently conceding, by its failure to advert to or touch of the grounds for the dismissal below, the correctness of appellant's attack on those grounds, it establishes a precedent of which argument on future cases may be advanced by reason of the fact that it cannot be determined from this case that such grounds constitute error, and thus we again are left to conjecture whether the Court holds that the Municipal Court of the Judges may be enjoined or otherwise, upon any grounds, valid or otherwise. It is true this Court has distinctly pointed the way not alone in In re Summers, supra, but in other cases as well[7], but if the Appeals Court can ignore it then in the present proceeding, they may do it again.

Perhaps, and we say this with regret, but with candor, the most stunning thing to us is that in the facts of the unmistakable import of the Statutes and the unmistakable construction of Hallen v. Canfield, supra, the Court in its decision leans, may leaves its decision strongly upon 11-756 of the 1951 D.C. Code, from 56 Stat. 1, ch 207, p 193, Sec. 5(b) the power to prescribe, by rules, the forms of process, writs, pleadings and motions, and practice and procedure... to provide for the efficient administration of justice...

That the word practice, as employed in the above context may be con-

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Footnotes: 5. Hurd v. Hodge, 82 App. D.C. 180, 186, 187
" v. " 332 Court granted 789, 68 S. Ct. 1110, 92 L ed 371
" v. " 334 U.S. 24, 35, 68 S. Ct. 847, 92 L ed 1187.
6. Ex Parte Bradley, 7 Wallace, 364, 375.
7. U.S. v. Lee, 106 U.S. 196, 770, 1 ed 1717, 182
7. Straub v Straub 97 U.S. App. D.C. 164, 229 F2d 505

stored to control and govern the right of admission to practice or to enjoin from practice and thus by inference, an unquestionably formal and erroneous one advanced by appellee, extinguish the will of Congress and the prior decision of the same Court is one of the greatest threats to the laws of the nation conceivable and if pursued by other Courts, can will result in complete annihilation of any or all laws.

In the first place, there is no mystery as to the function of rules of practice, pleading and procedure. It is well stated by Judge Holtzoff, F. J., 1954 Federal Rules of Court Procedure: "...Consequently, judicial procedure, as well as judicial administration, become exceedingly important. Procedure, to be sure, is not an end in itself. It is merely the means by which justice is achieved. Without an effective machinery for their enforcement, however, substantive rights become but dreams. For this reason, pleading and practice are vital, although it must be borne in mind that they are only tools and instruments by which the function is performed. In the absence of a simple, effective and expeditious procedure, justice cannot be properly dispensed without friction or delay."

By reading the rules of the Municipal Court as set out under "Statutes and Rule Involved", it can be plainly seen that there exists not a scintilla of justification for the contention of appellees that the rule gives the Judges, in the name of the Municipal Court, the power to admit attorneys to practice and to debar or reject them, hence to issue Rule 75, nor can we agree with the Court that the rules of practice, etc. justified the rule.

Not only does the decision except Appellee's point of view, save for the right to admit, which, while it states the Municipal Court possesses no power to admit, nevertheless rules that it may admit, for as we shall show and as we do not doubt, this Court has already seen, Rule 75 is nothing other than an exercise of the power to disbar and admit, and the Appeals Court accepts as well Appellee's further argument that the power manifest in Rule 75 is improper under the admonition in the rule to provide for the efficient administration of justice.

Footnote: E. Flaherty's District of Columbia Practice With Forms, Vol 1, p 2.

This, notwithstanding the present rules under 56 Stat. L. 11-736 - 1951 D.C. Code, are restrictive rather than an enlargement of those under 41 Stat. L. 11-732, of the 1940 D.C. Code, for the essential changes are: 1. The Court is enjoined to adopt to the degree practicable, the Fed. Rules of Civil Procedure; 2. That the said rules shall not abridge, enlarge or modify the substantive rights of any litigant; and 3. That the Court shall not make a single change in the operation of the Small Claims Branch of their Court.

We submit that under the above rules as they appear in the development of the Municipal Court, the powers were addressed entirely and exclusively to the progress of a case from inception to disposition.

Flaherty, those seven volume work on the mechanics of the District of Columbia judicial structure is a marvel of detail, intended to inform the practitioner of every form and step involved in conformance to those rules, even as to fees, does no enlargement of the Court's power to the extent of any control whatever over counsel, then existed therefore, and then only with respect to the step appropriate to the steady and unbroken course of his case to completion.

Flaherty further states that other than the increase of the jurisdictional amount of $3,000.00, and the power to entertain suits against administrators and executors within that amount, no change in the power of the Court occurred.[8]

Inasmuch, therefor, as the Appeal Court saw no relevance of the Rules of Practice and Procedure to the Mullen v. Canfield case, we submit there is less and certainly no more propriety in resorting to it here.

We would be hypocritical to confess that we perceive not the least relationship of rules of practice to the right in practice. An attorney can lose his case through failure to conform to those rules of practice and procedure but absent contempt or misconduct under 11-775, he could never be deprived of practice for failure to comply with those rules. The order of the Municipal Court discloses no failure of practice, pleading or procedure on the part of

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Footnote: 8. Flaherty's District of Columbia Practice With Forms, Vol 5, p 2.

Appellant respecting the cause on trial.

It is quite evident that if, under them the Court is to provide for the efficient administration of justice, it must avoid what it has done in its debarment of Appellant, and to the entire bar of the District of Columbia, for, being beyond its accorded powers, Rule 75 is neither efficient or justice.

And it is unquestionably contrary to the provision that their rule shall not abridge, enlarge or modify the substantive rights of any litigant.

With respect to the Appeals Court's statement, Doc. (1); "Austin argues that the Municipal Court has no power to admit to the bar, that authority having been vested by Congress in the District Court in so far as general practice in this jurisdiction is concerned. In that contention he is quite correct".

With profound and regretful respect, the appellant is obliged to state that the language underlined above is incorrect and its implication inaccurate. To the contrary, the appellant has, as fully as his command of English permitted contended that so complete and exclusive is the power of admission to practice entrusted and reposed in the District Court, that the attorney admitted to practice by it acquires, at the moment and by the procedure employed by the District Court, the right to membership at the bar of the District Court and all the inferior Courts of the District of Columbia judicial structure as well as the right to hold himself out as a member of the bar of the District of Columbia.

As authority for this position, he defends, as he has a right to depend, upon the case of Ex Parte Garfield, supra, and upon the plain and unambiguous language of the laws of Congress.

Moreover, in granting, under 11-775, to the Municipal Court the power, for misconduct, to censure, suspend or expel, one needs but to compare 11-775 with 11-1301 and 11-1304, to discover that 11-775 is patterned after and compounded from part of 11-1301 and 1304, the language in the main, being identical.

In 11-1301, we find Congress confers upon the District Court the power and duty of examination, qualification and admission to practice as well as

the power to censure, suspend and expel and includes the form of the oath to be taken. In 11-775, we find no corresponding provision respecting admission to practice or an oath with respect to the Municipal Court and the Municipal Court of Appeals, or anything akin thereto.

In our briefs, in the Municipal Court of Appeals, appellant was so meticulous in his reference to the laws and rules as if he had been assigned by the Court to make an impartial report. He is obliged to state that the brief of appellees has not followed the same pattern. The language purporting to interpret Rule 75 is not accurate, in that it claims that the rule merely requires that before an attorney may practice in such body, subscribe to a oath, etc. Omitted is the fact that the rule applies to all attorneys whether members of the bar of the Municipal Court therefore or not. This is a very difficult thing.

In the frontispiece to our Reply Brief, we point this out.

Nevertheless, the Appeals Court, in its decision, uses the interpretation of appellees.

Again, the appellees refer to 11-756 merely to cite the portion relating to the rules of practice, etc. and to the phrase respecting the efficient administration of justice, but omit the remainder as to preserving the substantive rights of litigants and the fact that as compared with the former statute, the present one is restrictive, required adoption to the Federal Rules of Civil Procedure (and as inquire since it involves civil procedure and the merger of Police Court and Municipal Court is part of the same Act. how can Rule 75 be applied to the Criminal Division of the Municipal Court) and enjoins the Court not to change the former practice in the Small Claims branch.

Prior to the merger of 1942, the rules stated such rules shall not be inconsistent with the law.

From 1893 no one ever supposed that admission by the District Court did not amount practice in all the Courts of the District. When the U.S. Court of Appeals was created and provided with an oath by Congress, admission by the District Court was sufficient to entitle the attorney upon the oath and $1,00

without any other condition to membership at that bar and from the 30 years until 1952, by Rule 75, it was never regarded that admission by the U. S. District Court failed to include the Municipal Court. Even now the Municipal Court of Appeals Rule 4 requires only membership at the District Court and good standing, which was the rule of the Municipal Court Rule 62 until the change in Rule 75, yet the Municipal Court had the power to make rules of Practice, Pleading and Procedure since 1920.

Appeals Court Reference To Case of Herman v. Dulles: The Court in Mullen case, supra, never made reference to other Courts and quasi judicial bodies, nor did appellant make any such claim. The law of Congress contain no such provision.

Appellees inject it as if such were the position the law, the Mullen case decision and the appellant cite the Herman v. Dulles, 92 U.S. App. D.C. 303, F2d 715 (D.C. Cir. 1953) and the Appeals Court have adopts it. Indeed it is the only case it cites to decide the case.

Permit us to state that to begin with that in that case Herman had been determined to have been guilty of improper conduct.

But quite aside from that factor, can there be any question or doubt, that had Congress be specific statute prescribed in unmistakable detail, the steps by which practice before the State Department was permitted and how one acquired the right to practice before it and as well stated in complete and unmistakable language and terms, precisely what was to be deemed improper conduct and the steps necessary to determine the guilt and punishment for the department, another source or exercise of power than that so accorded could be adopted from rules directed to practice and procedure, particularly when these are succinctly spelled out?

To apply that case to the present matter is, we respectfully suggest, in the face of the different places upon which the treasury, all other executive departments and quasi judicial bodies, such as administrative commissions and bureaus which are not part of any structure above the superior structure under the law decides certain matters for the inferior.

Not only does Rule 75 completely destroy the Constitutional Guarantees respecting taking property without due process and export facto laws and bills of attainer, but it is completely contrary to the law set out in the Mullen v. Canfield, Supra, which holds that the Municipal Court, not only lacks the power to admit, but must accept all attorneys as members of its bar whom they are admitted by the District Court and may not thereafter exclude some of them. (11-775 provides that for wrongful conduct as set out it may suspend or expel.) Rule 75 does precisely the opposite to the law of the Mullen case, in that it diverts every attorney of the jurisdiction, whether a member of the Municipal Court bar theretofore or otherwise, of his membership at the Municipal Court bar and extinguishes his membership at the Municipal Court bar.

Thus, it not only excludes some of them, but all of them; That it sets up conditions by which the attorneys may again become members, is completely beside the point and irrelevant, incompetent and immaterial.

It is, we respectfully are obliged to assert, an act of tyranny, a manifestation of despotic dominion and control over attorneys utterly incompatible with the independence of the bar, and absolutely without authority. The lack of authority is set out by this Court, but the validity of the rule is upheld upon a pretrial pretext".

We submit that the reasons advanced by this Court for validifying an unauthorized rule or one transgressing the Constitution are without legal basis, justification or support.

That the constitutional questions raised by appellant, are ignored by both appellees and this Court in its present decision and must be assumed to be unanswerable, for any constitutional challenge, requires an answer, unless the Court disclaims jurisdiction and have the Court assumes jurisdiction.

A reading of this Court's decision shows that in all references it adopts the language of appellee's brief which is almost in every respect inaccurate or only contains a part over as to the situation of the rule in dispute, whereas the appellant has meticulously quoted in toto in referring to Rule 75, to 11-756 and to all other matter.

In his brief, appellant has been accurate throughout, whereas the appel-

lee's brief has drawn unwarranted inferences and made bold and unsupported claims for authority by repetition, yet the Court appears to adopt that of appellee, as if it had not read the appellant's brief.

In the Bullen case, this Court held that applicants admitted to practice by the District Court were at the same time admitted to the inferior Courts of the District of Columbia; it made no reference to other Courts or quasi judicial bodies in this jurisdiction. The appellant made no such claim and indeed it is wholly outside the present consideration to consider any body other than those of the District of Columbia judicial structure.

Yet the appellee injects an argument as to the fact that admission to the District Bar does not purport to include membership at the other Courts and quasi judicial bodies in the District of Columbia and cites Herman v. Dulles, and other cases, and this Court adopts the argument.

Yet there is no basis for comparison between our District judicial structure and Federal governmental bodies incidentally in the District of Columbia, and totally unconnected with the Jurisdictional judiciary. The reference is wholly improper and immaterial to the evaluation and determination of the matter here, yet, this Court in order to hold adversely to the appellant, resorted to citing the Herman v. Dulles case, which bears no relation in fact or principle to the issues here. Palpably it is error to apply that case to the one here. The law here is plain and stated, that in the Herman v. Dulles and related cases is inferred, of no value in the consideration here.

It is impossible under legal principles to hold that the Municipal Court has no power to admit, to practice as this Court holds here and at the same time holds valid a rule of admission to practice issued by the Municipal Court.

No reasons advanced in support of its ultimate conclusion constitute legal considerations for denying the appellant and all other practitioners the free and unhampered right to continue to practice before the Municipal Court whether they do or do not comply with Rule 75.

There is no common ground for comparison between these bodies and Courts, certainly not where, as in this District, there exist a number of Courts of interwoven functions and jurisdictions, bound by well defined rules of procedure, of evidence, of degrees of preponderance and above an appeal system which so tolerates a course where any agency may investigate, initiate charges, prosecute them, try them and decide them where evidence, only beyond scintilla weight, will, under the law, serve to sustain its findings, though the opposition evidence to overwhelming where evidence is received or rejected virtually at the will of the trial examiner, including hearsay, back books and other matter utterly unacceptable under the rules of evidence as contained in the law where no motions to dismiss are permitted at the conclusion of the government's case and the ultimate finding may be based upon the respondent's case and may be a finding not included in the charges upon which the hearing was brought. These are mainly fact finding bodies, there are no jury trials, those practicing need not be members of the legal profession. Unless for errors of law, their determinations are not reviewable.

It is significant that in the Miller case no such parallel was detected by Judge Edgerton, yet he also announced the decision in Barnes v. Miller, yet here, against all the authorities cited by appellant and all the constitutional questions posed by appellant, Court of Appeals could advert only to the Barnes case and direct not a word to that appellant, whom the Court confess to be a "highly respected member of the bar for many years", has seriously projected, and if permitted to say so, from a deep and earnest belief that the plaintiffs nature of Rule 75 and similar encroachments solely by Lower Courts and the inertia of the bulk of the profession to resist them, has received little determination of the profession's stature.

In Wagner v. Gallegos, 66 App. D.C. 316, the Appeal Court, through Judge Stephens, relies upon the authority of U. S. v. Miller, 109 U.S. 385, 386, 3 S. Ct., 277, 27 L. ed 967, stating "...is clearly a limitation upon the Court in the [illegible] exercise. And a decree which transcends a limitation upon a

Court's fundamental power to void." (How such cases as is a rule of Court which transcends the Court's fundamental power). The Court (continuing) "This proposition is so elementary that it is not worthy of discussion. It is true in civil cases" and citing U.S. v. Miller, supra, the Court says "although a Court may have jurisdiction over the parties and the subject matter, yet if it enters a decree which is not within the powers granted to it by the law of its organization, its decree is void."

Reverting to a consideration of the Harman case above, it should be mentioned that these other Courts and quasi judicial bodies are not of the District. They are, furthermore, national in character and bear no relationship in the slightest degree to the Courts within the local structure.

Let here, a Court, clearly, definitely and intentionally denied by Congress, the power to admit to practice or to reject from practice, unless the attorney to be rejected has been brought under 11-775 of the 1951 D.C. Code, which the Appeals Court clearly states is not here the case, has deprived an attorney from practice through the promulgation of a rule of Court which unquestionably transcends the powers granted to it by the law of its organization, and the Appeals Court nullifies the rule and affirms the property of the attorney's deprivation by virtue of that Court's rule making powers which do not relate to attorneys but to the forms of practice, pleading and procedure.

We cannot refrain from stating that from the Rogers case, supra, wherein the Appeals Court says the proposition is so elementary that it is not worthy of extended discussion, to the decision in the present case, the Court of Appeals appears to have ranged from one extreme to the other.

We shall not burden the Court with a recital of the cases in which it has been consistently held that an exercise of a Court as to its excess of its powers is void.

The Appeals Court says "If the fee were substantial in amount, we might have a different problem, permit us to say that if the fee be held valid, the Municipal Court would raise the fee to $250.00, and we are sure we say that appeal would lie, for it would be an exercise of discretion, and in light of

the fact that in neighboring Maryland, the fee here is $250.00, where it was but $1.00, when appellant was admitted. No entertain doubt that it could properly be held to be an abuse of discretion.

It is, however, our thesis that it is the principle and not the amount which precedes the issue. Lacking the power to admit, the fee for admission is of necessity without the law.

We have elsewhere above discussed the oath.

In Ex Parte Secombe 19 Howard, 9, it was stated by Chief Justice Taney, (although the case was lost upon jurisdictional grounds): "And it has been well settled that it rests exclusively with the Court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for that reason he ought to be removed. The power is not an arbitrary and despotic one, to be exercised at the pleasure of the Court, but it is the duty of the Court to exercise and regulate by sound and just judicial discretion, whereby the rights and independence of the bar may be as carefully guarded and maintained by the Court, as the rights and dignity of Court itself."

It is as evident as possible that the Municipal Court Judges, in promulgating Rule 73 entertained no such concern for the bar as is requisite under the above case.

We submit that in the present instance the Municipal Court has no power over attorneys whatever in the latter's proper conduct as attorneys, above right to practice law under the law established by the District Court.

That Municipal Court Rule 73 was an act of dominion over such proper attorneys destructive of the independence of the bar, for it arose out of no act or situation charged, attributed or ascribed to the members of the bar.

There is no independence, if the Municipal Court, can, under a general rule impose conditions upon the bar not related to any cause before that Court, nor can it abolish membership at the bar by fiscal majeure, even for one instant, upon any pretext whatever, other than that set out in 11-775 of the 1951 District of Columbia Code.

THE LAW OF TO THIS TIME OF THE PRESENT SESSION

The case of Miller v. Caulfield, 70 App. D.C., 168 (1939), 105 Fed 47, is the only case in which the entire relationship of the Courts of the District of Columbia to each other and position of the attorneys with respect to the Courts of the District of Columbia judicial structure are treated and the applicable law delineated.

We shall, therefore, take it for our text.

The entire report of that case merits reading and is enlightening and profitable, and the decision is reached by unassailable logic and completely faithful adherence to legal principles.

For the purposes here, there are certain definitely established and uncontrovertible facts of law, laid down in that case, to guide us in our present concern. These are:

1. That the District Court and the District Court alone possesses the power and duty of determining who may hold himself out as a member of the Bar of the District of Columbia.

2. That when an applicant is admitted to practice by the District Court he becomes entitled to practice in all the inferior Courts of the District of Columbia.

3. That there exists as a matter of policy and as principle of common law or of statutory construction which suggests that an inferior court should be obliged to accept all members of the District Bar at the time of their admission, any affirmative contrary grant of power.

Inasmuch as the present decision of the Court holds that the District Court possesses no power to admit attorneys to practice and holds further that only the District Court possesses the power to admit attorneys to practice,

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Footnote* We have departed from the original text only to bring the sentence up to date and have employed "District Bar" in lieu of "District Court Bar", because the indicia in the acts of Congress, use the term "Admission to Bar District of Columbia", and not merely admission to Bar of District Court.

it cannot be denied that as to these factors the merger of the Police and Municipal Courts into one Municipal Court with two branches under the laws of Congress (56 Stat. L.) April 1, 1942, wrought no change whatever in the applicable law as it was construed in the Mallen v. Canfield case, supra.

Rule 75, of the Municipal Court, it is agreed by the contesting parties, is a rule of admission to practice. This Court presently does not say otherwise and a reading of the language of the rule reveals, without doubt, that it is indeed A Rule of Admission to practice. (as well as a rule of disbarment).

Rule 75, therefore, is not only invalid under the law of Mallen v. Canfield, supra, but under this Court's present determination here that the Municipal Court lacks any power to admit. This conclusion is inescapable under the above stated position of the law.

Whereof the Court has no power, it is powerless to do. It can take nothing by implication, for it was created by Congress and is physically and hence legally unable to go beyond the limitation of its powers, nor can the Judges, by rules, legally impart to the Court any power in excess of that possessed; Rule 75 was issued by the Municipal Court on January 2, 1952, without any preamble or prefatory explanation revealing either its source or its purpose nor citing any law or authority upon which it was predicated.

Inasmuch as it compelled compliance by all members of the bar, including those previously members of the bar of the Municipal Court was abolished. Only by and through compliance with and conformance to the said Rule 75 could any member of the bar of the District of Columbia acquire membership at the bar of the Municipal Court, and only through Rule 75 could he practice before that Court.

The present position of the Appellant establishes the accuracy of the argument above, for although freely practicing as a member of the Municipal Court theretofore, he has been prohibited from practice by virtue of non-compliance with Rule 75.

Hence, it is clear, beyond dispute, that membership is possessed solely through Rule 75, and that the previous membership is extinguished presently and beyond recovery under the rule.

Inasmuch as it is an unvarying rule of law, throughout the courts of the nation including the United States Court of Appeals for the District of Columbia Circuit, that on a Motion To Dismiss the Complaint, only the sufficiency of the complaint comes into consideration, was there not a failure of due process in that the Court of Appeals brought into consideration matters not discoverable in the complaint, which matters were purely of defense and predicating its decision entirely on these assumptions of defense, as well as a violation of Art. III Sec. 1 clause 17 (supra)?

Where it was made completely clear in Appellant's Reply Brief, that the Municipal Court could, upon a mere request to the District Court, obtain and possess the precise data respecting the membership at the bar of the District of Columbia, even to signatures, dates, etc, as was and is possessed by the District Court, and would be kept current, was there any legal justification or reasonability for the issuance of Rule 75?

Can there be legal justification or reasonability in a rule promulgated by any court to attain any objective by unauthorized or illegal means?

Assuming, arguendo, that the objectives of a court are laudable and desirable may it extend its powers by rule to achieve them?

Can a court, specifically denied a power by law, acquire it by a self promulgated rule?

JOINT APPENDIX

For the above reasons petitioner prays that the Writ of Certiorari be granted.

PHILIP W. AMRAM
Pro Se.

IN THE

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

12811

Phillip W. Austin, Appellant

v.

The Municipal Court for the District of Columbia, and the Judges Thereof.

APPEAL FROM JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX

IN RE

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PHILLIP W. AUSTIN)
503 Columbian Building
Washington, D. C.)

Plaintiff)

v.)

THE MUNICIPAL COURT OF THE)
DISTRICT OF COLUMBIA, and

) Civil Action No. 2129-'55

The Judges thereof:)

LEONARD P. WALSH, Chief Judge)
ARMOND W. SCOTT
GEORGE D. NEILSON)
NADINE L. GALLAGHER
FRANK H. MYERS)
MILTON S. KRONHEIM, Jr.
MARY C. BARLOW)
THOMAS C. SCALLEY
ANDREW J. HOWARD, Jr.)
JOHN J. MALLOY
EDWARD A. BEARD)
MILDRED E. REEVES

Defendant.)

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT TO ENJOIN THE JUDGES OF THE MUNICIPAL COURT OF THE DISTRICT OF COLUMBIA FROM DEBARRING PLAINTIFF FROM PRACTICING BEFORE THE MUNICIPAL COURT

The Plaintiff, Phillip W. Austin, respectfully shows to this Court as follows:

That in February, 1924, he was duly admitted and qualified to the practice of law in the District of Columbia.

That thereafter and continuously down to the present time he has maintained an office and actively engaged in the practice of the law in the course of which he has appeared in hundred of cases before the Municipal Court and has never been charged with improper conduct and he believes he bears a uniformly good reputation among the bar and the bench.

At the time of his admission to practice this Court was titled the Supreme Court of the District of Columbia and as such was the only Court within said District empowered by the Congress of the United States to admit persons to the practice of the law.

On January 2, 1952, the Municipal Court of the District of Columbia passed a rule numbered 75, without authority from the Congress of the United States, nor in pursuit on any statutory authority, which said rule required all lawyers to appear before the Clerk of the said Municipal Court, take an oath different in language from the oath prescribed by Congress and be registered and pay a fee therefor.

The law of Congress requires that before any member of the bar of the District of Columbia can be disbarred he must be confronted with charges and served with a copy thereof and be entitled to a hearing thereon before he can be disbarred from practice.

That notwithstanding the law certain Judges of said Municipal Court have denied plaintiff the right to practice before that Court and on May 5, 1955, plaintiff was formally debarred by Judge Edward A. Beard from practicing before the Municipal Court for the District of Columbia, a copy of which order is hereto annexed and made a part hereof.

That said rule 75 is without the law and the order of debarrment under it is likewise illegal and has the effect of doing irreparable injury to plaintiff in denying the right to practice before the Municipal Court.

WHEREFORE, plaintiff prays that an injunction issue out of this Court enjoining and restraining the Judges of the Municipal Court and each of them from debarring plaintiff from practicing before that Court, or in any manner interfering with the full and free right to appear in all matters of which it has jurisidiction in like fashion as other practitioners.

2. That this Court declare the said rule 75 as illegal in that it is without authority of law.

3. That the action of debarrment be deemed illegal in that it is retroactive.

4. That this Court declare the said action of debarrment is unconstitutional in that it is without due process.

5. And for such other and further relief as the nature of the case may require and to the Court may seem meet and proper.

/s/ Phillip W. Austin

PHILLIP W. AUSTIN, P.P.

DISTRICT OF COLUMBIA: ss,

Phillip W. Austin, being first duly sworn on oath deposes and says that he has read the foregoing complaint by him subscribed; that the matters and things therein set forth he verily believes to be true.

/s/ Phillip W. Austin

PHILLIP W. AUSTIN

Subscribed and sworn to before me this 12th day of May, 1955.

Harry M. Hull, Clerk
by Robert C. Huey, Deputy Clerk

Let This Amendment be filed

/s/ Curran, J
5/12/55

IN THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

HILLCREST HEIGHTS APARTMENTS, a corporation, Plaintiff	Civil Action No. M-3493-55
v.	
WILBUR G. PERINI, Defendant.	

AMENDED ORDER OF THE COURT

It having come to the attention of the Court that Phillip W. Austin, Esq., appearing as counsel for the defendant herein, is not a qualified member of the bar of this Court pursuant to Rule 75 of the Rules of this Court, the said Phillip W. Austin, Esq., having stated in open court during the trial of this cause that he has not complied with said Rule, the Court having given him a fair opportunity to comply with said Rule before proceeding further in this cause, he having stated in open court that he refuses to comply with said Rule, and the Court having orally made ruling upon the circumstances and record then existing, it is,

ORDERED, this 5th day of May, 1955, that said oral ruling be reduced to writing and elaborated in the following form and substance:

1. Upon service of this order upon him, or its receipt by him, the said Phillip W. Austin, Esq., is prohibited and enjoined from participating in or prosecuting any action in a representative capacity in this Court.

2. Pursuant to Rule 75(b) of the Rules of this Court the said Phillip W. Austin, Esq., is granted special permission to continue as counsel in this cause for the limited and only purpose of protecting by such procedure as is deemed advisable his presently asserted professional standing as a member of the bar of this Court.

3. This order shall not be construed to prevent the granting of special permission pursuant to Rule 75(b) of the Rules of this Court to the said Phillip W. Austin, Esq., to appear in a representative capacity in subsequent litigation in this Court.

4. Within five days after service of this order upon the said Phillip W. Austin, Esq., or its receipt by him. all pleadings filed in this cause signed only by him shall be stricken unless prior thereto the said are signed by the defendant or a member of the bar of this Court.

5. This order shall be stayed for a period of thirty days upon the noting of an appeal from its operation and effect without the necessity for an application for stay and upon application it will be stayed from time to time for additional periods of not more than thirty days for so long as appeal from its operation and effect is diligently prosecuted.

6. In the absence of objection from Counsel for the plaintiff this cause will be continued from time to time without the necessity for application for continuance until this order becomes final or is reversed.

7. The Clerk of this Court is directed to call to the attention of the presiding judge of each branch of this Court the existence of this order in all cases now pending in this Court in which the said Phillip W. Austin, Esq., is sole counsel of record for appropriate ruling under the circumstances then pertaining.

8. Upon compliance by the said Phillip W. Austin, Esq., with the admission requirements of Rule 75(b) of the Rule of this Court, this order shall be abrogated and of no force and effect, except that disciplinary procedures for prior violations shall be served.

/s/ Edward A. Beard
Judge

Dated: May 5, 1955.

A True Copy
Test
WALTER F. BRAMHALL, CLERK.
By William M. Nedrow
Chief Deputy Clerk.

Under the new rules of the Municipal Court, effective as of January 2, 1952, all attorneys who now practice or who expect to practice in the Civil or Criminal Division of the Court on or subsequent to January 2, 1952, are required to take an oath and be enrolled in accordance with the provisions of new Rule 75, which is set forth below.

Any attorney who wishes to enroll prior to January 2, 1952, may do so at the Office of the Clerk of the Court, Room 101 of the Criminal Division, at any time after December 17, 1951. The Clerk or his Deputy will administer the oath and furnish the attorney with an appropriate card upon the payment of the prescribed fee.

NEW RULE 75

ATTORNEYS

(a) The bar of this Court shall consist of any person who is a member of the bar of the United States District Court for the District of Columbia in good standing unless disbarred or suspended by action of this Court, provided such person shall:

(1) Take and subscribe to the following oath or affirmation, viz:

"I, _____, do solemnly swear (or affirm) that I am a member in good standing of the United States District Court for the District of Columbia, having been duly admitted on the ____ day of _____, 19___; that I have not been suspended or disbarred by any Court; that I will demean myself as an attorney and counsellor of the Court uprightly and according to law; and that I will support the Rules of this Court, the laws of the District of Columbia, and the Constitution of the United States".

(2) Upon subscribing thereto on a card to be furnished by the Clerk of this Court, sign the Roll of Attorneys of this Court and pay the sum of Fifty Cents ($.50) to the Clerk of this Court.

This provision shall become effective on the 2nd day of January, 1952, and shall be complied with by all persons whether or not a member of the bar of this Court at any time prior to this date.

(b) No person, other than such member duly qualified and admitted to practice as provided in sub-paragraph (a) shall, without special permission of the Judge presiding over the case in which such person is to appear and then for purposes of the trial of that case only, participate in, or prosecute any action in a representative capacity, in this Court.

(c) NON-RESIDENT ATTORNEYS - If an attorney has not been admitted to practice before the bar of this Court in accordance with sub-paragraph (a) and does not have an office in the District of Columbia there shall within ten (10) days be joined of record in such appearance a member of the Bar of this Court having an office in said District, in default of which the Court may strike all pleadings of such party.

(d) Nothing in these rules shall be construed to prevent any person from prosecuting or defending any action in his own behalf if he be without counsel.

(e) No attorney may withdraw his appearance except by leave of Court after due notice served on his client.

(f) It shall be the duty of all attorneys retained or employed by defendants in actions pending in the Civil Division to file their appearances in such pending actions prior to the return date, or if they shall have been retained or employed on the return date to file such appearances on said date.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA.

PHILLIP W. AUSTIN
503 Columbian Building
Washington, D. C.,

Plaintiff

v.

THE MUNICIPAL COURT OF THE DISTRICT OF COLUMBIA, and

The Judges Thereof:
LEONARD P. WALSH, Chief Judge
ARMOND W. SCOTT
GEORGE D. NEILSON
NADINE L. GALLAGHER
FRANK H. MYERS
MILTON S. KRONHEIM, JR.
MARY C. BARLOW
THOMAS C. SCALLEY
ANDREW J. HOWARD, JR.
JOHN J. MALLOY
EDWARD A. BEARD
MILDRED E. REEVES

Defendants

CIVIL ACTION no. 2129-55

Filed
June 2, 1955
Harry M. Hull, Clerk

Civil Action No. 2129-55

MOTION TO DISMISS

The defendant Leonard P. Walsh, Chief Judge of the Municipal Court for the District of Columbia, moves the Court to dismiss the complaint against him on the ground that it states no claim upon which relief can be granted.

/s/ Vernon E. West
Corporation Counsel,
D.C.

/s/ Milton D. Korman
Assistant Corporation
Counsel, D. C.

/s/ Richard W. Barton
Assistant Corporation Counsel,
D. C.

/s/ Carlos L. Cantrell

case in this court * * * shall be cause for the suspension or removing ... any attorney from practice before this court." Its rules also provide for a committee on grievances, and for the hearing of charges. These rules were complied with in the proceedings which led to the petitioner's suspension.

It is unquestioned (1) that when the District Court of the United States for the District of Columbia admits an applicant to its bar he becomes entitled to practice in the Police Court and the other inferior courts of the District; (2) that the Police Court has no power to admit persons to practice before it; and (3) that when the District Court suspends or expels a member of its bar he loses his right to practice in the Police Court. Apart from authority, a fairly obvious corollary would seem to be that (4) the Police Court has no power to suspend persons from practice before it. A contrary doctrine would destroy the coherence of the system. We know of no reason of policy and no principle of common law or

1 D. C. Code, Tit. 18, § 1.
2 United States v. Mills, 11 App. D. C. 500,507.
3 D. C. Code, Tit. 18, § 152.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PHILLIP W. AUSTIN,

Plaintiff

v.

THE MUNICIPAL COURT OF THE DISTRICT OF COLUMBIA, et al.,

Defendants

CIVIL ACTION no. 2129-55

Filed
June 2, 1955
Harry M. Hull, Clerk

ORDER

Upon consideration of the complaint, of the motion of the plaintiff for preliminary injunction, of the motion to dismiss the complaint on behalf of the defendant Judges of the Municipal Court for the District of Columbia, (all of whom, although not actually served with copies of the complaint, appeared before the Court by counsel), of the points and authorities in support thereof, of the oral motion of the plaintiff to amend the caption in the above-entitled cause, and of the oral arguments by the Plaintiff and by counsel for said defendants, and it appearing to the Court that "The Municipal Court for the District of Columbia" is not an entity which can sue or be sued and that the complaint fails to state a claim against the remaining defendants on which relief can be granted, it is, by the Court, this 2nd of June, 1955

ORDERED:

1. That the word "of" be changed to the word "for" in the name of the first party defendant in the caption of this cause, so as to read "The Municipal Court for the District of Columbia;"

2. That the motion of defendants to dismiss the complaint be, and it is hereby, granted; and

3. That the complaint be, and it is hereby finally dismissed.

/s/ Burnita Shelton Matthews
J U D G E

Copy of the foregoing form of Order
mailed this 2nd day of June, 1955
to Phillip W. Austin, Esq., plaintiff
503 Columbian Building, Washington,
D. C., his last known address.
/s/ Milton D. Korman
Assistant Corporation Counsel, D. C.
Attorney for Defendants, District Building, Washington, D.C.

No. 7182

JOHN P. MULLEN, PLAINTIFF IN ERROR

v.

AUSTIN F. CANFIELD, WILLIAM A. GALLAGHER, GEORGE MONK AND FRANKLYN YASMER, COMMITTEE ON GRIEVANCES OF THE POLICE COURT OF THE DISTRICT OF COLUMBIA, DEFENDANTS IN ERROR

In Error to the Police Court of the District of Columbia

Decided April 3, 1939

William E. Leahy, of Washington, D. C. for plaintiff in error.

William A. Gallagher, George Monk, and Austin F. Canfield, all of Washington, D. C., for defendants in error.

Before Groner, C. J., and Stephens and Edgerton, J. J.

Edgerton, J.: Petitioner is a member of the bar of the District Court of the United States for the District of Columbia. Respondents are the members of a Committee on Grievances of the Police Court of the District of Columbia. In proceedings instituted by the committee in the Police Court, petitioner was required to appear before that court and show cause why he should not be held in contempt "or" why he should not be suspended from practicing before that court. After a hearing, the court found him guilty of soliciting one Stasch to retain his services in a case before it, and of "professional misconduct prejudicial to the administration of justice" in so doing. No finding was made in regard to contempt. The Police Court suspended petitioner from practicing before it for six months. The case is here on writ of error.

The Code of the District of Columbia gives the District Court of the United States for the District of Columbia authority to admit persons to "its bar" (Tit. 18, S 52) and to censure, suspend or expel members of "its bar" (S 53), and regulates disbarment proceedings in that court. (S 55). With respect to the Police Court, there is no corresponding legislation. The Police Court is an "inferior court"[1] of "limited jurisdiction."[2] It has original jurisdiction concurrently with the District Court, except as otherwise provided, "of all crimes and offenses committed in the said District not capital or otherwise infamous and not punishable by imprisonment in the penitentiary, except libel, conspiracy, and violation of the post-office and pension laws of the United States; and also of all offenses against municipal ordinances and regulations in force in the District of Columbia."[3] It is empowered by statute to make rules for the apportionment of business among its judges (S 151); to examine, commit, or hold to bail (S 152); to issue process for arrest; and "to punish contempts by fine not exceeding twenty dollars and imprisonment for not more than forty-eight hours, or either, and to enforce any of its judgments by fine or imprisonment, or both, and to make such rules and regulations as may be deemed necessary and proper for conducting business in said court." (S 155.) It has adopted a rule which provides that "the unprofessional solicitation or procurement of services in any case in this Court * * * shall be cause for the suspension or removing of any attorney from practice before this court." Its rules also provide for a committee on grievances, and for the hearing of charges. These rules were complied with in the proceedings which led to the petitioner's suspension.

It is unquestioned (1) that when the District Court of the United States for the District of Columbia admits an applicant to its bar he becomes entitled to practice in the Police Court and the other inferior courts of the District; (2) that the Police Court has no power to admit persons to practice before it; and (3) that when the District Court suspends or expels a member of its bar he loses his right to practice in the Police Court. Apart from authority, a fairly obvious corollary would seem to be that (4) the Police Court has no power to suspend persons from practice before it. A contrary doctrine would destroy the coherence of the system. We know of no reason of policy and no principle of common law or

1 D. C. Code, Tit. 18, S 1.
2 United States v. Mills, 11 App. D. C. 500,507.
3 D. C. Code, Tit. 18, S 152.

accept all members of the District Court bar at the time of their admission, may afterwards exclude some of them. A confused and anomalous situation results if an attorney may be "disbarred in an inferior court and still have his license unrevoked as to all the superior courts." State ex rel. Jones v. Laughlin, 73 Mo. 442, 450. On the other hand, if he is disbarred or suspended under the provisions of the statute he is excluded from practice not only in the District Court, where the statutory proceedings are held, but in the inferior courts as well.

Unless a contrary legislative intent appears, a court which may admit attorneys may suspend or expel them.[4] Where no contrary intent appears it has been held that courts of superior or general jurisdiction, even when they have no power to admit, have some inherent power to suspend or expel.[5] But the general rule seems to be that an inferior court of limited jurisdiction, without power to admit, cannot suspend or expel. Control over the privilege of practice before an inferior court is usually lodged elsewhere. A justice of the peace in California has no power to suspend an attorney from practice in his court. Baird v. Justice's Court of Riverside Tp., 11 Cal. A. 439, 105 Pac. 258. A Municipal Court in New York, though it may adjudge an attorney in contempt for misconduct in its presence, "cannot be supposed to have any power to discipline attorneys for general misconduct or for violation of the canons of ethics." Bloomingdale Bros., Inc., v. Hudson, 147 Misc. 759, 264 N. Y. S. 639, 641. The Criminal Court of St. Louis being, like the Police Court here, a court of inferior and limited jurisdiction, without power to license attorneys, has no power to disbar them from practice before it; especially as the legislature has expressly recognized the power of other courts to disbar. State ex rel. Jones v. Laughlin, 73 Mo. 443. And a board of county commissioners having "limited judicial powers," including the power to punish for contempt, has no power to suspend from practice in its own forum; admission, exclusion and suspension of attorneys "can only be performed by courts possessing a general jurisdiction, either original or appellate." Garrigus v. The State, 93 Ind. 239, 242.

Broad statements in judicial opinions to the effect that courts, or courts of record, have inherent power to exclude attorneys should be understood, we think, as referring to courts of general jurisdiction.[6] The Supreme Court said in 1824, with respect to suspension, that "The power is * * * we think, incidental to all courts and is necessary for the preservation of decorum, and for the respectability of the profession." Ex parte Burr, 9 Wheat. (22 U.S.) 529, 531, 6 L. Ed. 152. But the Court was dealing with the power of the Circuit Court for the District of Columbia. So in 1835 the General Court of Virginia said: "It would seem, then, that independently of any statutory restriction, the courts of record of this commonwealth might, in a proper case, suspend or annul the license of an attorney so far as it authorizes him to practice in the particular court, which pronounced the sentence, but no farther." Ex parte Fisher, 6 Leigh (Va.) 619, 624. But the court was speaking of the "circuit superiour court of Jackson."

The power to suspend or disbar is "distinct from the power to punish for contempt; though it is frequently the case, that the causes for removal from the bar may also present ground for punishment as for contempt." In re Adriaans, 17 App. D. C. 39, 46. As the present petitioner was not adjudged in contempt, the question of suspension as a punishment for contempt is not involved. That

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4 The power to disbar "is possessed by all courts which have authority to admit attorneys to practice." Ex parte Robinson, 86 U. S. 505, 512, 22 L. Ed. 205. Beene v. The State, 22 Ark. 149, 156; Commonwealth v. Richie, 114 Ky. 366, 70 S. W. 1054; cf. People v. The Justices of the Delaware Common Pleas, 1 Johns. (N.Y.) 181.

5 The St. Louis Court of Appeals has inherent power to disbar, although the Supreme Court of Missouri is the only court in the state which has power to license attorneys to practice. State ex rel. Selleck v. Reynolds, 252 Mo. 369, 158 S. W. 671; In re Richards, 333 Mo. 907, 63 S. W. (2d) 672. A Nebraska district court of general jurisdiction has inherent power to suspend an attorney from practice in its judicial district, In re Yeiser, 110 Neb. 65, 192 N. W. 953; aff'd, Yeiser v. Dysart, 267 U. S. 540, 45 S. Ct. 399, 69 L. Ed. 775; although it has no power over admissions and consequently its power of suspension is limited to its own district. In re Newby, 76 Neb. 482, 107 N. W. 850. A Florida county court, being a court of record with "considerable jurisdiction," may disbar from practice before it, although it cannot admit to practice. State v. Kirke, 12 Fla. 278, 286, 95 Am. Dec. 314. Cf. Bryant's Case, 24 N. H. (5 Post.) 149.

6 Cf. 5 Am. Jur., Attorneys at Law, § 251.

question was involved in United States ex rel. Alward v. Latimer, 44 App. D.C. 81. There the petitioner, a member of the bar, had been ordered by the Juvenile Court to show cause why he should not be adjudged in contempt of that court, and suspended from practice before it, for abetting a defendant in evading trial. The Supreme Court of the District, now the District Court, quashed a writ of certiorari to the Juvenile Court; and this court affirmed that judgment. This court said: "The question is: Was the juvenile court without jurisdiction to punish for contempt? * * * The power to suspend from practice in that court is one that is within its sound discretion. * * * We think that the court would be authorized to suspend an attorney from practice before that court in a case where he has aided and abetted a prisoner in evading a trial." 44 App. D. C. 81, 84. The theory of the decision apparently was that suspension might be imposed as a punishment for contempt, although the court's language goes further and seems to recognize some general power of suspension. Since the Juvenile Court was authorized, as the Police Court is authorized, only to "punish contempts by fine not exceeding twenty dollars and imprisonment for not more than forty-eight hours, or either,"[7] we think that case was wrongly decided. The Supreme Court has held that even a District Court of the United States, with authority to admit attorneys and, after proper proceedings, to disbar them, cannot disbar them in the exercise of its power to punish for contempt when a statute expressly authorizes other punishments for that offense. The Court said: "The * * * Judiciary Act of 1789 declares that the court shall have power to punish contempts of their authority in any cause or hearing before them, by fine or imprisonment, at their discretion. The enactment is a limitation upon the manner in which the power shall be exercised, and must be held to be a negation of all other modes of punishment." Ex parte Robinson, 86 U. S. 505, 512, 22 L. Ed. 205.

We find it unnecessary to consider whether the evidence supported the charge of solicitation, or whether a single solicitation justifies suspension, for we conclude that the Police Court has no power of suspension. If a lawyer's conduct in connection with the Police Court is thought to call for suspension, complaint should be made to the District Court. It is only fair to the Police Court and the respondents to say that if they have erred in this respect the responsibility is not theirs but that of this court, since they properly relied upon its broad language in the Alward case.

Reversed.

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[7] 34 Stat. 76, c. 960, S 17; D. C. Code, Tit. 18, S 267.

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 12811

Phillip W. Austin, Appellant

v.

The Municipal Court for the District of Columbia, and the Judges Thereof, Appellees

Decided June 24, 1950

Mr. Phillip W. Austin, appellant, pro se.

Mr. Milton D. Korman, Assistant Corporation Counsel for the District of Columbia, with whom Mr. Vernon E. West, Corporation Counsel, Mr. Chester H. Gray, Principal Assistant Corporation Counsel, and Mr. Richard W. Barton, Assistant Corporation Counsel, were on the brief, for appellees.

Before Prettyman, Wilbur K. Miller, and Washington, Circuit Judges.

Prettyman, Circuit Judge: Appellant Austin brought a civil action in the District Court praying an injunction restraining the judges of the Municipal Court from "debarring" him from practice before that court and praying that the District Court declare Rule 75 of the Municipal Court illegal as without authority of law. The District Court dismissed the complaint.

Austin is now and has been for many years a member of the bar of the District Court and of this court, having been duly admitted to practice in 1934. He has practiced in all the courts of this jurisdiction. In 1938 the Municipal Court adopted a rule (Rule 75), which provided that the bar of that court should consist of members of the bar of the District Court in good standing, provided such persons should have signed a roll, and pay the sum of fifty cents. The Clerk of the Municipal Court gives to each attorney complying with the rule an appropriate card of identification.

Austin argues that the Municipal Court has no power to admit to the bar, that authority having been vested by Congress in the District Court in so far as general practice in this jurisdiction is concerned. In that contention he is quite correct. The appellee judges [illegible] that thousands of cases are presented to them for disposition and the identification [illegible] in the Municipal Court is a small difficulty. They say their new rule merely establishes a convenient roll, with a card of identification, so that persons entitled to practice before their court can instantly be identified. They point out that the required oath is in no wise different from the usual oath required of attorneys and that the fee is purely nominal.

It is well known that many agencies in the District of Columbia, without power to admit to the general practice of the law, regulate the qualifications of attorneys to practice before them, with an ancillary oath and a prescribed fee. Such, for example, are the Treasury Department and several of the Commissions. The Municipal Court and Congress by statute [illegible] rules governing and admitting to that court "to provide for the efficient administration of justice". Moreover the statute also provides that the Municipal Court and the Municipal Court of Appeals "shall have full power and authority to suspend, or expel from practice, at their respective bars, any attorneys." This latter provision unquestionably indicates that [illegible] See, e.g., Herman v. Dulles, 82 U.S. App. D.C. 200, 202

gives to each attorney complying with the rule an appropriate card of identification.

Austin argues that the Municipal Court has no power to admit to the bar, that authority having been vested by Congress in the District Court in so far as general practice in this jurisdiction is concerned. In that contention he is quite correct. The appellee judges say, however, they have a practical problem in that thousands of cases are presented to them for disposition and the identification of people who purport to represent litigants in the Municipal Court is a real difficulty. They say their new rule merely establishes a convenient roll, with a card of identification, so that persons entitled to practice before their court can instantly be identified. They point out that the required oath is in no wise different from the usual oath required of attorneys and that the fee is purely nominal.

It is well known that many agencies in the District of Columbia, without power to admit to the general practice of the law, require the enrollment of attorneys to practice before them, with an ancillary oath and a prescribed fee. Such, for example, are the Treasury Department and several of the Commissions.[1]

The Municipal Court was empowered by statute[2] to prescribe by rules the practice and procedure in that court "to provide for the efficient administration of justice". Moreover the statute also provides[3] that the Municipal Court and the Municipal Court of Appeals "shall have full power and authority to censure, suspend, or expel from practice, at their respective bars, any attorney-at-law." This latter provision unmistakably indicates that

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[1] See, e.g., Herman v. Dulles, 98 U.S. App. D.C. 288, 235 F. 2d 715 (D.C.Cir. 1956).

[2] 36 Stat. 198 (1868), D.C. Code & 11-736(b) (1951).

[3] 36 Stat. 196 (1868), D.C. Code & 11-775 (1951).

Congress had in mind that there would be a bar of the Municipal Court from which that court could suspend or expel an attorney.

Austin uses the word "disbarment" to refer to the fact that the Municipal Court will not permit him to practice there unless he is enrolled. There has been no disbarment in any sense in which that term may be used to refer to action taken by a court to prevent an attorney from practicing. No charges have been preferred against Austin, and none are suggested. He has been a highly respected member of the bar for many years. He has not been refused enrollment. He has simply declined to enroll. Any time he chooses to become enrolled as a practitioner in the Municipal Court, he is perfectly free to practice there. There is no disbarment in any derogatory sense.

We think Rule 78 imposes no discriminatory requirement for the practice of law but is instead a reasonable requirement of procedure for the efficient administration of justice. It avoids a troublesome problem in the everyday conduct of the court's business. Neither he with nor the fee in any impediment whatsoever to the enrollment of any attorney already a member of the bar. If the rule were removed in its terms or the fee substantially increased, we might have a different problem.

Austin argues that he was entitled to charges and a hearing. But there are no charges and nothing to be heard. As we have said, the situation is simply that the attorney declines to enroll. We think his rights are fully protected by the ability to bring this suit.

We think the rule of the Municipal Court is valid.

Affirmed.